

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

September 9, 2002

**D038872        People v. Chaplin**

The convictions are affirmed. The sentence is reversed and remanded for resentencing consistent with this opinion. Kremer, P.J.; I Concur: Benke, J.; I Concur in the Result: McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke  
Clerk: D. E. Moore

**D039220        In re Amber M. et al., Juveniles**

Cause called on merits. Craig E. Arthur, Esq. argued for appellant. Carl Fabian, Esq. argued for the children. Patricia Plattner Grainger, Deputy County Counsel argued for respondent. Mr. Arthur replied. Cause submitted.

**D038885        Calbeach Advocates v. City of Solana Beach et al.**

Cause called on merits. Richard J. Wharton, Esq. argued for appellant. Scott Williams, Esq. argued for appellant. James G. Moose, Esq. argued for respondent. Jonathan C. Corn, Esq. was present in oral argument, but did not argue. Mr. Wharton replied. Cause submitted.

Court recessed at 10:15 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

**D037529        Allan et al. v. First Healthcare Group et al.**

Cause called on merits. James C. Mitchell, Esq. argued for appellant/cross-respondent. Anthony Joseph Romano, Esq. argued for respondent/cross-appellant, First Healthcare Group. Leslie C. Detwiler, Esq. argued for respondent/cross-appellant, Nelson. Mr. Mitchell replied. Cause submitted.

Court recessed at 10:45 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

**D037921        Proud v. San Pasqual Union School District**

Cause called on merits. Pamela A. Dempsey, Esq. argued for appellant. Dale R. Larabee, Esq. argued for respondent. Ms. Dempsey replied. Cause submitted.

Court recessed at 11:14 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell  
Clerk: D. E. Moore

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**D038639          Goodrich v. City of San Diego et al.**

Cause called on merits. Elizabeth Schulman, Esq. argued for appellant, and submitted a letter to the court referencing cases to be argued during oral argument. Carra L. Lassman, Deputy City Attorney argued for respondent. Ms. Schulman replied. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

**D038387)          Diehl v. Sim J. Harris et al.**

**D038494)          Sim J. Harris Company et al. v. Superior Court**

Cause called on merits. Greg Konoske, Esq. argued for appellant/cross-respondent. Diana Avery Myers, Esq. argued for respondent/cross-appellant. Mr. Konoske replied. Cause submitted.

**D038340          Falcone et al. v. Stevens**

Cause called on merits. Michael Warren Vivoli, Esq. argued for appellant. Ira Gary Wasserman, Esq. argued for respondent. Mr. Vivoli replied. Cause submitted.

**D037862          Bennett et al. v. French et al.**

Cause called on merits. Manuel Corrales, Jr., Esq. argued for appellant. Paul Johnson, Esq. argued for respondent, French and etc. Dick A. Semerdjian, Esq. argued for respondent, Stauffer. Mr. Corrales replied. Cause submitted.

Court recessed at 3:01 p.m. until Tuesday, September 10, 2002 at 9 a.m.

**D037868          People v. Hickey**

The judgment is affirmed. Huffman, Acting P.J.; I Concur: O'Rourke, J.  
I respectfully dissent (opinion): McDonald, J.

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**D038424        Hendrick v. Buckley**

Affirmed. Hendrick is awarded costs on appeal. McConnell, J.; We Concur: Huffman, J., O'Rourke, J.

**D038210        People v. Valverde**

The convictions of lewd and lascivious conduct are reversed. Valverde has not challenged his convictions of annoying or molesting a child. The two convictions of that offense are affirmed. Because Valverde has served more than the maximum punishment on the two convictions of annoying or molesting a child, he should be released on those convictions forthwith. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

**D040732        People v. Person**

The appeal is dismissed.

**D040658        In re Keefe on Habeas Corpus**

The petition is denied.

**D039138        Kholodkov et al. v. Hertz et al.**

Upon filing a written abandonment of appeal, the appeal is dismissed.

**D040663        Leach v. Blaisdell**

The appellant having failed to timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 1(c)(5).)

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**D039437      In re Jennifer P., a Juvenile**

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

**D036682      People v. Douglas**

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., McConnell, J.

**D040559      Varner, Saleson & Dobler v. Superior Court of San Diego County/Insouth  
Bank et al.**

The petition is denied.

**D040054      The Elmore Company v. Agricultural Labor Relations Board/Cortez**

The petition is denied.

**D038454      Dennert v. City of Escondido et al.**

The judgment denying Dennert's petition for writ of mandate is reversed and the matter is remanded to the trial court with directions to issue a peremptory writ of mandate compelling the City to set aside its termination of his employment and to reconsider its decision following compliance with procedural due process requirements. Dennert is awarded costs on appeal. McConnell, J.;  
We Concur: McIntyre, Acting P.J., O'Rourke, J.

**D039171      In re Rebecca L. et al., Minors**

The petition for rehearing is denied.

**D038401      People v. Hulsey**

All proceedings in this cause have permanently abated by reason of appellant's death. The appeal is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller

Clerk: D E Moore

**D039959      Weingarten v. Superior Court**

Matter called on merits. Vincent H. Chieffo, Esq. argued for petitioner. David A. Niddrie, Esq. argued for real party in interest. Mr. Chieffo replied. Matter submitted.

Court recessed at 9:42 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

**D038656      Fung, et al. v. Timineri, et al.**

Cause called on merits. Laurence P. Lubka, Esq. argued for appellant. Tim Sullivan, Esq. argued for respondent. Mr. Lubka replied. Cause submitted.

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**D038794      San Diego Trolley, Inc., et al. v. Superior Court/Kinder-RPI**

Matter called on merits. Lee Roistacher, Esq. argued for petitioner. Robert Jarchi, Esq. argued for real party in interest. Mr. Roistacher replied. Matter submitted.

**D037195      Mason B. et al. v. Mennen et al.**

Cause called on merits. Martin N. Lettunich, Esq. argued for appellant. Gordon Levinson, Esq. argued for respondent, Schmidt. Barbara McCully, Esq. argued for respondent, Mennen. Mr. Lettunich replied. Cause submitted.

Court recessed at 11:05 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell  
Clerk: D. E. Moore

**D038721      Caunin v. California Department of Corrections et al.**

Cause called on merits. Paul D. Jackson, Esq. argued for appellant. Martin Hagan, Deputy Attorney General argued for respondent. Mr. Jackson replied.

**D038413      Osborn et al. v. City of San Diego et al.**

Cause called on merits. Robert H. Lynn, Esq. argued for appellant. Theresa Castagneto McAteer, Esq. argued for respondent. Mr. Lynn replied. Cause submitted.

**D038423      Nau v. Zimmer, Inc., et al.**

Cause called on merits. Michael H. Fish, Esq. argued for appellant. Robert F. Vaage, Esq. was present in oral argument, but did not argue. Michael Elvin, Esq. argued for respondent. Cause submitted.

Court recessed at 2:45 p.m. until Wednesday, September 11, 2002 at 9:00 a.m.

**D040659      Benjamin N. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Benjamin N. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D040756      San Diego Community College District v. Superior Court of San Diego County/Brennecke et al.**

The petition is denied.

**D040737      People v. Bieniemy**

In that the motion under Penal Code section 851.5 subsection (a) is made pretrial it is not appealable. The appeal is dismissed without prejudice.

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**D040061        In re Verlinde on Habeas Corpus**

The petition is denied.

**D039635        Bame et al. v. City of Del Mar**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a).  
The appeal is dismissed.

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**D040414      In re Hali M., a Juvenile**

The appeal is dismissed. Benke, Acting P.J.; Huffman, J., O'Rourke, J.

**D037129      People v. Singleton**

The true findings on the firearm enhancements appended to the torture court are reversed and the trial court is directed to dismiss the enhancement allegations and modify the sentence accordingly. The order denying Singleton's motion for new trial trial is reversed and remanded with directions to reconsider the motion; in all other respects the judgment of conviction is affirmed. McDonald, J.;  
We Concur: Haller, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

Clerk: D. E. Moore

**D038120      Bering v. Interinsurance Exchange of the Automobile Club**

Cause called on merits. Maxine Lebowitz, Esq. argued for respondent. Joel G. Selik, Esq. argued for appellant. Cause submitted.

**D037771      Souza, Jr. et al. v. You Haul Concrete, Inc.**

Cause called on merits. Jeffrey A. Agnew, Esq. argued for appellant. James A. Testa, Esq. argued for respondent. Mr. Agnew replied. Cause submitted.

**D038163      Transmedia Network, Inc., et al. v. Countrywide Business Alliance**

Cause called on merits. Michael Clifford Lieb, Esq. argued for appellant/cross-respondent. Candace Carroll, Esq. argued for respondent/cross-appellant. Mr. Lieb replied. Cause submitted.

**D038267      Burge v. County of San Diego**

Cause called on merits. Daniel Ernest Marshall, Esq. argued for appellant. English Bryant, Deputy County Counsel argued for respondent. Mr. Marshall replied. Cause submitted.

**D038388      De La Torre v. Manchel et al.**

Cause called on merits. James Edward Switzer, Esq. argued for appellant. Roland Colton, Esq. argued for respondent. Mr. Switzer replied. Cause submitted.

**D037701      Hodges v. Elig et al.**

Cause called on merits. Richard E. Hodges, argued for appellant in pro per. Maria C. Severson, Deputy City Attorney argued for respondent. Mr. Hodges replied. Cause submitted.

Court recessed at 10:59 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

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Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares  
Clerk: D. E. Moore

**D038264        Burlington Motor Carriers, Inc. v. Tucker**

Cause called on merits. Angela Lui Walsh, Esq. argued for appellant. Peter S. Gregorogvic, Esq. argued for respondent. Ms. Walsh replied. Cause submitted.

**D038563        F. Rodgers Insulation, Inc., et al. v. CM Firestop, Inc., et al.**

Cause called on merits. Robert A. Huddleston, Esq. argued for appellant. David M. Greeley, Esq. argued for respondent. Mr. Huddleston replied. Cause submitted.

**D038961        Gregg v. Revelle et al.**

Cause called on merits. Reginald A. Vitek, Esq. argued for appellant. Dean Janis, Esq. argued for respondent, Revelle. William M. Benjamin, Esq. argued for respondent, Collins. Mr. Vitek replied. Cause submitted.

Court recessed at 2:38 p.m. until Thursday, September 12, 2002 at 1:30 p.m.

**D040423        In re Jordan G., a Juvenile.**

The appeal is dismissed. Benke, Acting P.J.; We Concur: Huffman, J., O'Rourke, J.

**D040415        In re Desire N., a Juvenile.**

The appeal is dismissed. Benke, Acting P.J.; We Concur: Huffman, J., O'Rourke, J.

**D040726        In re Marriage of Russell and Smith**

The petition for writ of supersedeas is denied.

**D040228        People v. Aguirre**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D040779        Gibson v. Superior Court of San Diego County/People**

The petition is denied.

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**D037874        People v. Moya**

The judgment is affirmed. O'Rourke, J.; I Concur: Benke, Acting P.J., McDonald, J., Dissenting

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

Clerk: D. E. Moore

**D036167        Whispering Ridge Homeowners Association v. Chaudry**

Cause called on merits. Abdul Chaudry, argued for appellant in pro per. Susan K. Stewart, Esq. argued for respondent. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

**D037922        Azure Investors LLC v. JOHNB Corporation**

Cause called on merits. David M. Greeley, Esq. argued for respondent. Dena Acosta, Esq. argued for appellant. Cause submitted.

Court recessed at 9:43 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

**D038229        Judco Manufacturing, Inc. v. Juan Carlos Soberanes Eguia, et al.**

Cause called on merits. Kevin C. Young, Esq. argued for appellant. Cause submitted.

**D038985        Hawkes v. Sommer**

Cause called on merits. Ervin Sommer, argued for appellant in pro per. Gregory Y. Liewers, Esq. argued for respondent. Mr. Sommer replied. Cause submitted.

Court recessed at 10:26 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

Clerk: D. E. Moore

**D037163        People v. Carrillo**

Cause called on merits. Steven Samuel Lubliner, Esq. argued for appellant. Melissa Mandel, Deputy Attorney General argued for respondent. Mr. Lubliner replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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Court recessed at 2:01 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

**D037201        Merryweather v. Pecheles**

Cause called on merits. No appearance by appellant, in pro per. Marc O. Stern, Esq. argued for respondent. Cause submitted.

**D038409        In re Larry H., a Juvenile**

Cause called on merits. Rosemary Bishop, Esq. argued for appellant. Angela Borzachillo, Deputy Attorney General argued for respondent. Ms. Bishop replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

**D037429        Swinton et al. v. City of Poway**

Cause called on merits. Neal Panish, Esq. argued for r.p.i.-appellant, McCullough-Ames Development. James Lough, Esq. argued for appellant, City of Poway. Michael M. Hogan, Esq. argued for respondent. Mr. Panish replied. Mr. Lough replied. Cause submitted.

Court recessed at 2:58 p.m. until Friday, September 13, 2002 at 9:00 a.m.

**D039819        People v. Espinoza**

The judgment is modified by dismissing the prior prison term enhancements. The trial court shall prepare an amended abstract of judgment reflecting this modification and forward it to the Department of Corrections. As so modified, the judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McConnell, J.

**D037174        Wisniewski v. Presidio Place Condominium Association et al.**

The judgment is affirmed. The respondents are entitled to costs on appeal. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

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**D036593        People v. Avila**

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., McConnell, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith McConnell  
Clerk: D. E. Moore

**D040086        Muckle v. Superior Court**

Matter called on merits. Karyn Massie, Esq. argued for real party in interest. Stephen Temko, Esq. was present in oral argument for petitioner, and submitted on the briefs. Matter submitted.

**D039434        In re Chani M., a Juvenile**

Cause called on merits. Susan Bookout, Esq. argued for appellant. Suzanne Evans, Esq. argued for the minor. Lisa Maldonado, Deputy County Counsel argued for respondent. Ms. Bookout replied. Cause submitted.

Court recessed at 9:44 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

**D037955        People v. Lerma**

Cause called on merits. William M. McGuigan, Esq. argued for appellant. Daniel Rogers, Deputy Attorney General argued for respondent. Mr. McGuigan replied. Cause submitted.

Court recessed at 10:01 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

**D037527        Valenzuela v. Department of Veterans Affairs of the State of California**

Cause called on merits. John McCardle, Esq. argued for appellant/cross-respondent. Stephen J. Modafferi, Esq. argued for respondent/cross-appellant. Robert Byars, Esq. replied for appellant/cross-respondent. Cause submitted.

Court recessed at 10:17 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

**D035652        Credit General Insurance Company v. Kaufman**

Cause called on merits. Patrick E. Catalano, Esq. argued for appellant. Martin L. Shives, Esq. argued for respondent. Mr. Catalano replied. Cause submitted.

Court recessed at 10:35 a.m. until 1:30 p.m.

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Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith McConnell  
Clerk: D. E. Moore

**D038189      Rodriguez, etc., et al. v. Orange Coast Managed Care Services**

Cause called on merits. Kevin Mirch, Esq. argued for appellant, telephonically. Lawrence J. Rose, Esq. argued for respondent. Mr. Mirch replied, telephonically. Cause submitted.

**D039700      Callender v. Marie Callender Pie Shops, Inc.**

Cause called on merits. Edward I. Silverman, Esq. argued for appellant. Richard E. Drooyan, Esq. argued for respondent. Mr. Silverman replied. Cause submitted.

Court recessed at 2:28 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

**D038031      Short et al. v. United Services Automobile Association**

Cause called on merits. John Morris, Esq. argued for appellant. Amy Akiyama, Esq. argued for respondent. Mr. Morris replied. Cause submitted.

**D038336      Olson v. ARV Assisted Living, Inc.**

Cause called on merits. Doug Barritt, Esq. argued for respondent/cross-appellant, ARV Assisted Living, Inc. Anton Gerschler, Esq. was present in oral argument for respondent/cross-appellant, but did not argue. Ms. Acosta replied. Cause submitted.

Court adjourned at 2:55 p.m.

**D039189      People v. Ferguson**

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D039771      People v. Bailey**

The judgment is affirmed. Kremer, P.J.; We Concur: Haller, J., McConnell, J.

**D040012      In re Lauren L., a Minor**

The orders are affirmed. Benke, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D037162      Wisniewski v. Presidio Place Condominium Association et al.**

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

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**D039951        Carroll v. Superior Court of San Diego County/San Diego County Health and Human Services Agency et al.**

Let a writ of mandate issue directing the Superior Court of San Diego County to vacate its order of March 8, 2002, and to enter a new and different order granting the public defender's motion to be relieved as counsel for the minors, and hold a hearing to determine appointment of new counsel for minors in accordance with the considerations expressed in this opinion. CERTIFIED FOR PUBLICATION.  
McDonald, J.; We Concur: Huffman, Acting P.J., McConnell, J.

**D037430        People v. Brandy**

The judgment is affirmed. O'Rourke, J.; I Concur: Haller, Acting P.J., I Dissent: McDonald, J.

**D040009        In re K. H. et al, Juveniles**

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

**D040017        Dwight S. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The stay issued July 9, 2002, is vacated. The petition is denied. McConnell, J.;  
We Concur: Huffman, Acting P.J., O'Rourke, J.

**D038387        Diehl v. Sim J. Harris Company et al.**

**D038494        Sim J. Harris Company et al. v. The Superior Court of San Diego County/Diehl**

The May 15, 2001 "Judgment on Cross Complaint" is modified to add a statement that this final judgment incorporates the April 24, 2001 order entitled "Judgment After Trial Amended." As modified, the May 15, 2001 judgment is affirmed with respect to Harris. The portion of the May 15, 2001 judgment finding that Caltrans is entitled to recover on a cross-complaint against Diehl is reversed. The petition for writ of mandate filed by Harris and Caltrans is dismissed. The parties to bear their own costs on appeal.  
Haller, J.; We Concur: Huffman, Acting P.J., McConnell, J.

**D040005        In re Daniel W., a Juvenile.**

The orders are affirmed. McConnell, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D039435        In re Donald C., a Juvenile.**

The order is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.